

2003 BCSECCOM 346

Settlement Agreement

Bank of Montreal

Securities Act, RSBC 1996, c. 418

¶ 1 The following settlement of issues has been reached between the Bank of Montreal (the Bank) and the Executive Director.

Agreed Statement of Facts

¶ 2 As the basis for the undertakings and orders referred to in this settlement, the Bank acknowledges the following facts as correct:

1. The Bank is a Canadian chartered bank and a reporting issuer under the Act. The Bank engages in the business of taking deposits, lending funds, and providing other financial services.
2. The Commission issued Directions to Freeze Property under section 151 of the Act on April 13 (COR# 00/099) and 27 (COR# 00/109) and May 5 (COR #00/117) and 12, 2000 (COR# 00/119) (collectively the Freeze Orders).
3. The Freeze Orders, among other things, required the branch of the Bank located at 595 Burrard Street, Vancouver, British Columbia to hold any funds which it had on deposit for the Exchange Bank & Trust (EBT Account #1).
4. The Bank had opened Account #1 in the name of Exchange Bank & Trust in August, 1997. In May, 2000 the Bank entered into a new account agreement with Exchange Bank & Trust.
5. Acting on the advice of its legal counsel, in March, 2003 the Bank opened a new account in the name of Exchange Bank & Trust and transferred interest already paid into Account #1 into the new account (EBT Account #2).
6. While the Freeze Orders have been in force, the Bank has deducted from EBT Account #2 certain expenses it claims it has incurred from June, 2000 forward as a result of operating EBT Account #1.
7. As of March 31, 2003 the Bank has deducted approximately \$91,985.14 from EBT Account #2.

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8. From the time Commission staff learned that the Bank was removing funds that were subject to the Freeze Orders, it repeatedly asked the Bank to stop deducting its expenses and to replace any funds that it removed.
9. The Bank breached the Freeze Orders by not paying the interest earned by EBT Account #1 into that account and by depositing and removing funds from EBT Account #2.
10. The Bank acted throughout on the advice and direction of its legal counsel and at no time did the Bank intend to breach the Freeze Orders.

Undertaking

¶ 3 The Bank undertakes to do the following:

1. to make EBT Account #2 whole by replacing any funds and any interest owing on those funds that it deducted from EBT Account #2;
2. once EBT Account #2 is made whole, the Bank will transfer all funds from it to EBT Account #1 and then close EBT Account #2;
3. to comply with the Act and the *Securities Rules*, B.C. Reg. 194/97 and all applicable regulations, policies and guidelines from the date of this agreement; and
4. not to say anything, in writing or orally, which may contradict the terms of this settlement or call those terms into question; however, nothing in this agreement shall restrict the Bank's right to claim any excess interest which it may have paid into EBT Account #1 or Account #2 or to claim legal or other expenses resulting from its involvement with Exchange Bank & Trust.

Waiver

¶ 4 The Bank waives any right it may have, under the Act or otherwise, to a hearing,

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hearing and review, judicial review or appeal related to, in connection with, or incidental to this settlement.

¶ 5 May 23, 2003

¶ 6 “Keith Perrett”
Bank of Montreal
Authorized Signatory: Keith W. Perrett

“Lorraine Howard”)
Witness Signature)
Lorraine Howard)
Witness Name (please print))
21st Floor, First Cdn Place)
Address)
Toronto Ontario M5X 1A1)
Lawyer)
(Member of Law Society of Alberta))
Occupation)

¶ 7 May 23, 2003

“Stephen J. Wilson”

¶ 8 Stephen J. Wilson
Executive Director